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APR 22 2009

OFFICE OF PETITIONS

In re Application of	:	
Scott A. Sirrine	:	
Application No. 09/736,232	:	ON PETITION
Filed: December 14, 2000	:	
Attorney Docket No. 65856-0025	:	

This is a decision on the petition, filed February 19, 2009, which is being treated as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to timely pay the issue and publication fees on or before January 7, 2009, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed October 7, 2008. A Notice of Abandonment was mailed on January 30, 2009.

Petitioner states that a search of the file jacket and docket records indicates that the Notice of Allowance of October 7, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The evidence presented by applicant is insufficient to withdraw the holding of abandonment since the petition has failed to comply with requirement (3) above. *See* MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

Accordingly, the request to withdraw the holding of abandonment is dismissed.

It is noted that petitioner submitted alternative petitions under 37 CFR 1.137(a) and (b); however, until there is a final resolution of the petition under 37 CDR 1.181, the decision on the petitions under 37 CFR 1.137(a) and (b) will be held in abeyance.

Further correspondence with respect to this matter should be delivered through one of the following mediums:

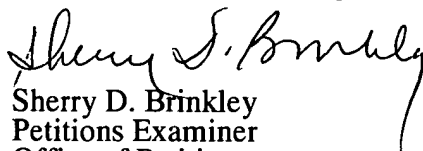
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By fax: (571) 273-8300
 ATTN: Office of Petitions

By Internet: EFS-Web¹

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions

¹ www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)